

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VAR E. LORDAHL

Appeal No. 97-0997
Application 08/370,851¹

HEARD: April 9, 1999

Before CALVERT, STAAB and NASE, Administrative Patent Judges.
CALVERT, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 and 7, all the claims remaining in the application.

The subject matter in issue is a toilet tank ball flapper and chain assembly, wherein the chain is an elongate planar member and is engaged to the periphery of the base plate of

¹ Application for patent filed January 10, 1995. According to appellant, the application is a continuation of Application 08/158,449, filed November 29, 1993, now abandoned.

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the flapper. The appealed claims are reproduced in the appendix of appellant's brief.

The references applied in the final rejection are:

Schoepe et al. (Schoepe) 1961	2,985,291	May 23,
WoOLF et al. (WoOLF) 1976	3,943,577	Mar. 16,
Freed 1987	4,698,859	Oct. 13,

Claims 1 and 7 stand finally rejected under 35 U.S.C. § 103 as unpatentable over Freed in view of WoOLF and Schoepe.²

The basis of the rejection is stated on pages 4 and 5 of the examiner's answer, and need not be repeated here.

After fully considering the record in light of the arguments presented in appellant's brief and reply brief, and in the examiner's answer, we conclude that the combination of references applied by the examiner does not make out a prima facie case of obviousness.

Initially, we agree with the examiner that, for the reasons stated by him, it would have been obvious to utilize a

² In the Advisory Action of April 22, 1996 (Paper No. 7), the examiner indicated that a rejection of claim 1 under 35 U.S.C. § 112, second paragraph, was overcome by the amendment filed on April 8, 1996.

flat plastic strap ("elongated planar plastic member") as the chain 13 of the Freed flapper valve assembly in view of the disclosure of such a chain (54) by Woolf. We do not regard Woolf's disclosure of such a strap as being used in addition to the normal chain 38 as detracting from the suggestion that a strap may be used in place of a flapper valve link chain.

On the other hand, we do not consider that the recited engagement of such a planar strap about the periphery of Freed's base plate 10 would have been obvious in view of Schoepe. Appellant acknowledges at page 8 of the brief that "pluralities of hobby model pieces are typically engaged together within large boxes when received by a consumer", and Schoepe discloses that two toilet inlet pipe seals 14, 20 may be molded concentrically as a unit, connected by frangible web 24, in order to reduce manufacturing, inventory and packaging problems (col. 1, lines 46 to 60). However, while this prior art would suggest to one of ordinary skill that the flapper 10 and chain 13 of Freed (as a strap) might be molded as two separable parts of a one-piece molded article, we find no suggestion that the chain be molded around the periphery of the flapper base plate, as claimed. Although Schoepe's seals

14, 20 are nested, this would not teach one of ordinary skill to position the chain of Freed around the periphery of the flapper because Schoepe's seals are to be separated from each other by engagement with fitting 32 (col. 3, lines 36 to 43), and when in use, seals 14 and 20 are still in the same (coaxial) orientation relative to each other as they were when attached to each other; cf. Figs. 1 and 3. Schoepe's disclosure therefore is not suggestive of the claimed assembly having a chain engaged around the periphery of a flapper base plate, because in such an assembly the chain is not an item which is to be separated from the flapper by engagement with any fittings, and in use assumes a different orientation relative to the flapper.

Since a prima facie case of obviousness has not been established, it is unnecessary to consider the Declarations Under Rule 1.132 submitted by appellant.

Conclusion

The examiner's decision to reject claims 1 and 7 is reversed.

REVERSED

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IAN A. CALVERT)	
Administrative Patent Judge)	
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